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Attorneys for Plaintiff
HORTA, LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HORTA, LLC,

Plaintiff,

v.

CITY OF SAN JOSE,

Defendant.

CASE NO. C 02-04086 JF (RS)

[Related Case Nos. C 00-20018 JF
and C 05-03778 JF]

**STIPULATION AND [PROPOSED] ORDER
CONTINUING MAY 5, 2006 HEARING ON
HORTA, LLC'S MOTION TO
RECONSIDER, REOPEN, AND AMEND
JUDGMENT**

[Civil Local Rule 6-2]

Judge: Hon. Jeremy Fogel
Complaint: August 23, 2002

STIPULATION

WHEREAS, on February 28, 2005, the Court entered judgment in this action;

WHEREAS, on March 14, 2005, plaintiff Horta, LLC ("Horta") filed its Motion to Reconsider, Reopen, and Amend Judgment (the "Motion to Amend") and set it for hearing on May 6, 2005;

WHEREAS, on May 6, 2005, the Court continued the hearing on the Motion to Amend to August 5, 2005 to permit Horta to conduct additional discovery relating to issues presented in the Motion to Amend;

WHEREAS, Horta has served discovery on non-party Federal Aviation Administration ("FAA"), in the form of document requests and requests for deposition testimony relating to issues presented in the Motion to Amend;

WHEREAS, on July 7, 2005, Horta and the City stipulated to continuing the August 5, 2005 hearing on the Motion to Amend at least ninety (90) days;

WHEREAS, on July 13, 2005, the Court continued the hearing on the Motion to Compel to November 4, 2005;

WHEREAS, on September 20, 2005 and October 14, 2005, the FAA filed motions to quash Horta's subpoenas for documents and deposition testimony;

WHEREAS, Horta has filed a separate action to enforce its right to the requested discovery from the FAA in the related case *Horta, LLC v. Federal Aviation Administration*, United States District Court, Northern District of California, Case No. C 05-03778 HRL (the "*FAA Action*");

WHEREAS, on September 30, 2005, Horta and the City stipulated to continuing the November 4, 2005 hearing on the Motion to Amend at least ninety (90) days;

WHEREAS, on October 5, 2005, the Court continued the hearing on the Motion to Amend to February 3, 2006;

WHEREAS, on October 27, 2005, Horta filed a motion for summary judgment in the *FAA Action* to compel the FAA to provide complete responses to Horta's discovery requests and to provide the requested deposition testimony;

WHEREAS, the Court took the FAA's motions to quash and Horta's motion for summary judgment under submission at the close of the December 16, 2005 combined hearing on the motions and has not yet ruled on them;

WHEREAS, on January 26, 2006, Horta and the City stipulated to continuing the February 3, 2006 hearing on the Motion to Amend at least ninety (90) days;

WHEREAS, on January 30, 2006, the Court continued the hearing on the Motion to Amend to May 5, 2006;

WHEREAS, pursuant to the February 7, 2006 Order in the *FAA Action*, the Court will not issue its ruling on the FAA's motions to quash and Horta's motion for summary judgment unless and until the Court is informed that discussions between Horta and the FAA regarding a potential resolution have failed to resolve the issues presented by those motions;

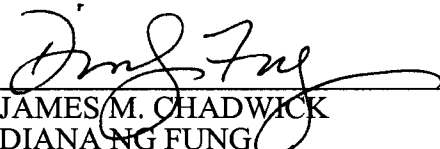
WHEREAS, if the discussions between Horta and the FAA fail to resolve the issues presented by Horta's motion for summary judgment and the FAA's motions to quash, Horta contends that it requires additional time to complete discovery pertaining to the issues raised in the Motion to Amend;

WHEREAS, Horta and the City of San Jose (the "City") agree that the May 5, 2006 hearing on the Motion to Amend should be continued for at least ninety (90) days;

THEREFORE, IT IS HEREBY STIPULATED by and between the parties to this action that the May 5, 2006 hearing on Horta's Motion to Amend shall be continued at least ninety (90) days.

Dated: March 30, 2006

DLA PIPER RUDNICK GRAY CARY US LLP

By 
JAMES M. CHADWICK
DIANA NG FUNG
Attorneys for Plaintiff HORTA, LLC

1 Dated: March 30, 2006

2 RICHARD DOYLE, City Attorney

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4 By Nora Frimann

5 NORA FRIMANN

6 JOSEPH P. DICIUCCIO

7 SANDRA LEE

8 Attorneys for Defendant CITY OF SAN JOSE

9 **ORDER**

10 PURSUANT TO STIPULATION, IT IS SO ORDERED. The hearing on Horta's Motion
11 to Reconsider, Reopen, and Amend Judgment is further continued from May 5, 2006 to
12 August 4, 2006, at 9:00 a.m., in the courtroom of the Honorable Jeremy Fogel,
13 located at 280 South First Street, San Jose, California.

14 April 4, 2006

15 Dated: March _____, 2006

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17 Jeremy Fogel
18 JEREMY FOGEL
19 UNITED STATES DISTRICT COURT JUDGE
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1 Dated: March __, 2006

2 RICHARD DOYLE, City Attorney

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4 By _____
5 NORA FRIMANN
6 JOSEPH P. DICIUCCIO
7 SANDRA LEE
8 Attorneys for Defendant CITY OF SAN JOSE

9 **ORDER**

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19 JEREMY FOGEL
20 UNITED STATES DISTRICT COURT JUDGE
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